



Comptroller General
of the United States
Washington, D.C. 20548

McAuliffe

144995

Decision

Matter of: Building Services Unlimited, Inc.--Request
for Declaration of Entitlement to Costs

File: B-244135.2

Date: October 7, 1991

Dennis J. Riley, Esq., and Jared H. Silberman, Esq., Elliott, Bray & Riley, for the protester.
David W. LaCroix, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to protester's allegation of a conflict of interest, the agency took corrective action less than 3 weeks after being notified of the allegation.

DECISION


Building Services Unlimited, Inc. (BSUI) requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest.^{1/} On May 20, 1991, BSUI protested the Department of the Navy's failure to solicit it for the award of a 3-month interim contract (No. N62467-91-B806) for the collection and transportation of oily waste at the Naval Coastal Systems Center, Panama City, Florida. In its protest, which sought resolicitation of the procurement and an opportunity for BSUI to compete, the protester contended that the agency had consciously attempted to "steer" solicitations from the protester. On June 5, 1991, BSUI advised us of a possible conflict of interest in the award of this and other contracts. After learning of a potential conflict of interest relating to the award of the contract (the principals of the awardee were alleged to have familial

^{1/} BSUI also seeks the reasonable costs of bid preparation, however, BSUI did not submit a bid under the solicitation.

ties with the contract specialist who handled the procurement), on June 21, the contracting officer and the awardee agreed to a bilateral modification closing out the contract. The agency took additional corrective action including an investigation of the potential conflict of interest. The agency informed our Office of its plans to include the balance of the contract requirements in a future multi-function contract. Since the protester will have an opportunity to compete upon resolicitation, as requested, and thus received the relief requested, we dismissed the protest on August 5, as academic.

The protester has filed a claim with our Office under section 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3759 (1991), (to be codified at 4 C.F.R. § 21.6(e)), for the costs of filing and pursuing its protest. Pursuant to the revised regulations, if the contracting agency decides to take corrective action in response to a protest, we may declare the protester to be entitled to recover reasonable costs of filing and pursuing its protest, including attorneys' fees.

As we previously stated, see, e.g., Leslie Controls, Inc.--Claims for Costs, B-243979.2, July 12, 1991, 91-2 CPD ¶ 50, it is not our intention in adopting the revised provision, regarding the award of costs in cases where the agency takes corrective action, to award protest costs in every case in which the agency takes corrective action in response to a protest. Since our concern was that some agencies were not taking corrective action in a reasonably prompt fashion, our intent is to award costs where, based on the circumstances of the case, we find that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Here, although the Navy questioned the merits of BSUI's initially filed protest, the agency took corrective action in response to the subsequently advanced conflict of interest allegation less than 3 weeks after the protester raised this allegation. Such action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our regulation is designed to encourage. It provides no basis for a determination that the payment of protest costs is warranted. Accordingly, BSUI's request for a declaration of entitlement to costs is denied. See Oklahoma Indian Corp.--Claim for Costs, B-243785.2, June 10, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 558.


Michael R. Golden
Assistant General Counsel